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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARQUETTE BROWN,

Defendant and Appellant.

B265950

(Los Angeles County
Super. Ct. No. BA429228)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed.

Marquette Brown, in pro. per.; and Jenny Brandt, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Marquiette Brown's appointed attorney filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) that raises no issues and asks us to independently review the record. We invited defendant to personally submit a supplemental brief and he has done so, presenting seven contentions of error that in his view warrant reversal. In the paragraphs that follow, we summarize the facts and explain why defendant's contentions lack merit.

The District Attorney in Los Angeles charged defendant with one count of second degree robbery in violation of Penal Code section 211.¹ The robbery charge was predicated on evidence that defendant took money and electronic devices from victim Trevan Lynn (Lynn) on September 6, 2014. After a trial, a jury convicted defendant on the robbery charge but found untrue the section 12022.7(a) allegation that defendant inflicted great bodily injury on Lynn. The trial court sentenced defendant to seven years in state prison, consisting of the low term of two years plus a consecutive five-year term, pursuant to Penal Code section 667(a), for sustaining a prior robbery conviction in 1994. If the court had not granted defendant's *Romero*² motion to strike that 1994 conviction for purposes of sentencing under the Three Strikes Law, defendant's sentence would have been longer.

The witnesses called by the prosecution, including robbery victim Lynn, testified to the following facts.³ Lynn had known defendant for several years and allowed defendant and his girlfriend Melissa Williams (Williams) to live in his apartment for four to five months. Lynn eventually asked Williams (but not defendant) to move out, and Williams came back to Lynn's apartment a week or two later and accused him of stealing her purse. Lynn denied taking the purse and left the apartment building to avoid

¹ Undesignated statutory references that follow are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

³ Defendant offered several exhibits into evidence during his defense case, but he called no witnesses. (As the trial court confirmed on the record, defendant opted not to exercise his right to testify in his own defense.)

Williams, who was “rais[ing] hell.” Defendant and Williams followed Lynn, and the two boxed him in (Williams in front and defendant behind him) in the area of a nearby Home Depot. Lynn testified at trial that someone then snatched a bag he was carrying and hit him “all over” his head but he didn’t see who it was; a Los Angeles Police Department detective, however, testified he interviewed Lynn shortly after the incident and Lynn identified defendant and Williams as the people that attacked him. Lynn did testify at trial that he saw defendant and Williams going through his bag immediately after the incident, i.e., when he regained consciousness after blacking out briefly from the attack. A bystander testified she saw Lynn being attacked and saw a man and a woman, who the bystander could not identify, walk across the street with Lynn’s bag and rifle through it. As a result of the attack, Lynn suffered a bleeding gash requiring five staples when he was treated at a hospital. Police recovered the bag taken from him and returned it to him at the hospital; Lynn saw his Verizon tablet, a “hot spot,” and \$120 in cash were missing.

Defendant’s first contention of error is that there is insufficient evidence to support his robbery conviction. We reject the contention; Lynn’s testimony and the additional evidence presented at trial is substantial evidence supporting the verdict. (Evid. Code, §§ 411, 1235; *People v. Smith* (1967) 253 Cal.App.2d 299, 301-302.)

Second, defendant asserts the trial court erred in permitting Lynn to testify that Williams accused him of stealing her purse because the testimony was hearsay and a violation of his right to confrontation. Defendant is incorrect; the testimony was non-hearsay because it was not offered for the truth of the matter asserted. (Evid. Code, § 1200; see also *People v. Spector* (2011) 194 Cal.App.4th 1335, 1370.)

Third, defendant argues the trial court should have permitted his attorney to introduce evidence that the investigating officer saw a group of people apparently using drugs at Lynn’s residence when the officer went to interview Lynn about the robbery two or three days after it occurred. The evidence was properly excluded as irrelevant, and the exclusion was harmless in any event. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Fourth, defendant argues the trial court should have permitted the defense to introduce medical records from Lynn’s treatment at the hospital that indicated he had

methamphetamine and THC (a chemical associated with marijuana) in his system. We hold there was no error. The records were irrelevant without any testimony, which the defense did not offer, concerning whether the test results were probative of when the drugs were consumed and the impact the drugs would have had, if any, on Lynn's memory or ability to testify accurately. The exclusion of the records was also harmless in any event because Lynn admitted on cross-examination that he probably used methamphetamine before and after the attack at the Home Depot on the day in question.

Fifth, defendant contends his trial attorney should have called an expert to testify the drugs in Lynn's system would have impaired his ability to identify who robbed him. We construe the claim to assert ineffective assistance of counsel, which is inappropriate for resolution on appeal and which fails for lack of prejudice in any event. (*Strickland v. Washington* (1984) 466 U.S. 668, 687, 694; *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Sixth, defendant argues the trial court should have "let my attorney ask the police officer if Ms. Williams was with another black man when she was arrested. . . . because it could have shown that she did the robbery with someone else." The trial court properly sustained the foundation objection to the question because the testifying officer did not participate in Williams's arrest. The fact the testimony sought to elicit was also irrelevant in any event.

Last, defendant claims the trial court advised him of his right to a trial on the prior conviction allegations against him, but failed to advise him he had a right to a *jury* trial. He states that he would not have waived his jury trial right if he had been properly advised. Pages 964-965 of the reporter's transcript demonstrate the trial court advised him of his right to have a jury decide the prior conviction allegations, a right that defendant personally waived.

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*People v. Wende*,

supra, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.